IN THE

United States Court of Appeals

For the Ninth Circuit

No. 17425

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 340, AFL-CIO,
Respondent

On Petition for Enforcement of an Order of the National Labor Relations Board

Brief for Respondent

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Brief for Respondent

I.

STATEMENT OF THE CASE

This case is before the Court upon petition of the National Labor Relations Board, hereafter called the Board, to enforce its order (R. 38-42)[1] against respondent, here-

1. In accordance with the Board's brief (fn. 1), references herein to the printed record are designated "R", and the appearance of a semicolon in a series of references denotes a division between Board findings and the evidence relating thereto.

after called Local 340, issued under Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), hereafter called the Act. No question is presented as to the jurisdiction of this Court or the Board. The Board concluded that Local 340 had refused, in the operation of its hiring hall, to refer Jack L. Wood for employment to a particular job because he was a member of Local 800 of the International Brotherhood of Electrical Workers, and not a member of Local 340, affiliated with the same International. Local 340 readily conceded before the Board, as it does here, that it declined to refer Wood to the job which he requested, but denies that Wood's membership in a sister local was the reason therefor. The evidentiary facts relating to Local 340's operation of the hiring hall, and the handling of Wood's request for referral, may be summarized as follows:

A. Local 340's Administration of the Hiring Hall.

Local 340 represents electricians in the Sacramento Valley area who work primarily in industrial, commercial and residential jobs (R. 6; 103). It is generally referred to as a "wireman's" local (R. 6; 103). Local 340 has a collective bargaining contract with the Sacramento Valley Chapter of the National Electrical Contractors Association, under which it is vested with the responsibility of operating an exclusive hiring hall for the recruitment of employees for the Association's members (R. 34; 44-50). The hiring provisions of the contract provide that the selection and referral of applicants shall be made "without discrimination against such applicants by reason of membership or non-membership in the union," and without regard to "any other aspect or obligation of union membership policies or requirements" (R. 46-47). Applicants for employment wishing to

use the facilities of the hiring hall may register in the highest of five separate group classifications for which they can qualify. The classifications are based upon such factors as experience, competency as determined by a written examination, length of residency within the area, and prior employment by an employer party to the contract (R. 6-7; 47-48). Referrals are made in accordance with registration seniority and by group priority (*ibid.*). An exception to the classification system may be made, however, "when the employer states bona fide requirements for special skills and abilities," in which case "the first applicant on the referral list possessing such skills and abilities" will be dispatched to the job (R. 7; 50). In the event that any registrant is dissatisfied with his treatment in the hiring hall, he is entitled to complain to an Appeals Committee, composed of two members representing the union and management, respectively, and a third public member, who during the events in this case was a Catholic priest (R. 8; 50, 139-140).

Local 340 has established several hiring halls within its jurisdiction, including Chico, California, which is involved in this case (R. 5; 45-56, 102-103). The rules for the operation of the Chico hiring hall are posted for inspection by the applicants (R. 128). These rules require applicants to register in the appropriate book, or classification, and thereafter to "verify," their availability for work by initialing a dispatch book, noting the dates upon which they report to the hall (R. 17-18; 89-90, 94-95). The hiring hall at Chico is administered by Stanley Hamilton, Business Representative of Local 340, who is under the general supervision of William J. Campbell, Business Manager of Local 340 (R. 8; 102, 116).

B. The Experience of Applicant Jack L. Wood in Local 340's Hiring Hall.

1. WOOD'S USE OF THE HIRING HALL PRIOR TO THE EVENTS IN THIS CASE.

Jack L. Wood is a member of Local 800, International Brotherhood of Electrical Workers, having jurisdiction over railroad electricians, but on various occasions Wood has utilized the facilities of Local 340's hiring hall (R. 9-10, 34; 69). Thus, in 1957 Wood obtained a job in Oroville with Walsh Construction Company, and was cleared for work by Local 340 (R. 10; 70). Walsh Construction Company is engaged, *inter alia,* in the drilling and construction of tunnels and has a repair and maintenance shop in Oroville where work is performed on its mine locomotives and other heavy equipment using heavy-duty DC batteries (R. 9; 54). The Company is a member of the National Electrical Contractors Association, and utilizes the Chico hiring hall for recruitment of its employees (R. 34; 57).

In December, 1958, Wood was laid off by Walsh Construction Company, and reported to Local 340's hiring hall where he registered in the "travelers' book" as available for employment (R. 10; 71-72). In his effort to obtain employment, Wood talked with Business Manager Joe Campbell at about the same time, and was told that his membership in Local 800 was "not so good" because there were no "wiremen in 800," and that he "shouldn't work in a construction local" (R. 35; 99-100). Later in the month, however, Wood was dispatched from the hall to a job with Wismer and Becker Electric Company, where he worked for approximately a year (R. 11; 72). During this employment Wood applied for membership in Local 340, but he was not permitted to transfer his membership from Local 800 at that time (R. 11; 72-73). In December, 1959, Wood quit his job with Wismer and Becker and once again, on December 23, reported to the hiring hall in Chico (R. 15-16; 75-76).

2. WOOD'S SUBSEQUENT ATTEMPTS TO OBTAIN EMPLOYMENT WITH WALSH CONSTRUCTION COMPANY, AND LOCAL 340's REFUSAL TO CLEAR HIM FOR THAT EMPLOYMENT.

When Wood appeared at the Chico hiring hall he requested to register in the group one book, but was told by Business Representative Stanley Hamilton that he was eligible only for group three since he had not passed an examination (R. 16, 34; 76). Wood informed Hamilton at this time that he was a member of Local 800 and that he had once worked for Walsh Construction Company (R. 16; 76). Although the hiring hall rules, which were posted for inspection by applicants, required continued verification by applicants of this availability, Wood did not comply with this rule following his registration until about February 5, 1960, and was not dispatched for jobs during this period (R. 17; 89, 95, 101, 128). Also during this period Wood took an examination to qualify him for a higher referral priority (R. 17; 78). On February 5, 1960, however, Hamilton told Wood that he had not been eligible to take the examination, and further informed him that his registration in group three was a mistake, and that he must register in the group four book (R. 18; 80, 93-94, 104-105). Hamilton had erroneously placed Wood in group three because Wood had originally stated upon registering that he was a journeyman wireman, an inaccuracy which apparently came to light when Wood took the examination (R. 104-105).

Following February 5, 1960, Wood regularly verified his availability for work, and also noted on the dispatch book that he had special skills in lead burning and DC battery repair (R. 18; 81-82, 95). On February 12, 1960, another applicant, Merridith Ward, was dispatched to Walsh Construction Company for a job requiring such skills, and Wood asked Hamilton why he had not been sent

to the job instead of Ward (R. 18; 52, 94). Hamilton replied that Wood had not verified his availability for work until after Ward had registered in group four on January 22, 1960 (R. 18; 51, 94).

In the meantime, on about January 15, 1960, Rudolph Shulz, electrical superintendent for Walsh Construction Company had notified Hamilton that Walsh needed a man for the Oroville shop, and requested that Ward, Shulz's son-in-law, be dispatched to the job (R. 12; 54, 58, 59). At that time there was only one employee at Walsh's Oroville shop, Shulz's son, whom Shulz had asked to be cleared by Local 340, and had been put to work in a non-electrician classification when clearance was denied on the ground that Shulz's son had "no classification whatever" (R. 12; 57-58, 118). The first applicant referred by Hamilton for the Walsh job was Arnold Olds, on February 5, but Superintendent Shulz determined that Olds was not qualified and rejected him (R. 12-13; 52). Thereafter, as stated above, Ward was dispatched, and was accepted for employment by Shulz (R. 13; 52). Shulz later called the hiring hall for an additional man who was qualified to work on heavy DC batteries (R. 13; 62). Shulz had earlier mentioned Wood's name to Hamilton as qualified for the job, and repeated the request for Wood on subsequent calls (R. 13; 60, 112, 119). The first man dispatched to Walsh after Ward had been hired was an applicant named Wheeler, who had registered in group 1 on March 11 (R. 13; 52). Hamilton took him out to the job on March 18 (*ibid.*). Wood was aware that Wheeler was being referred to the Walsh job, and followed him when he reported to Shulz (R. 13, 19; 83). After Wheeler was hired by Shulz, Wood asked Shulz if another man was needed, but Shulz answered in the negative (*ibid.*).

About two weeks later Shulz called the hiring hall for another electrician qualified to work at the Oroville shop (R. 14; 62). Local 340's Business Manager Campbell and Business Representative Hamilton thereupon met with Shulz to discuss the continuing requests to the hiring hall for a specially skilled man (R. 14-15; 120-121). Campbell told Shulz that Local 340 was of the opinion that Shulz was attempting to obtain Wood out of order under the hiring procedure (*ibid.*). Shulz denied this, and Campbell assured him that the Union could furnish Walsh with other qualified applicants who had a higher priority (*ibid.*).

Thereafter, in April and May, two additional men were referred to Walsh from the hiring hall, but neither was accepted by Shulz (R. 14-15; 52, 63-64). Of the several men dispatched to the Walsh job, two were not members of Local 340, but held cards in sister wiremen's locals (R. 110, 113). Wood was never dispatched to the Walsh job (R. 15; 65). Hamilton, however, told Wood that the Sacramento railroad local had available jobs for referral, and also suggested that Wood might more easily obtain work through the Marysville hiring hall of Local 340 (R. 85, 114-115).

3. THE REASONS ADVANCED BY LOCAL 340 FOR NOT REFERRING WOOD TO THE WALSH JOB.

Business Manager Campbell testified at the hearing before the Trial Examiner that he had directed Hamilton that Wood should not be referred to the Walsh job (R. 119). Campbell's stated reason for issuing this instruction was that he had become convinced that Shulz's attempt to obtain Wood by name was not "a bona fide request for a special skill under [the] referral system," but rather that Shulz "was after the man" irrespective of his eligibility for referral (R. 126, 120). Campbell reached this conclusion in view of Shulz's continued attempts to obtain union

clearance for named individuals, including two members of his family (*supra,* p. 6), and also because of his conviction that there was not sufficient work at the Oroville shop requiring the special skills for the number of men Shulz had requested (R. 118-126, 155-156). Campbell also felt that Shulz had rejected some of the applicants dispatched from the hiring hall in spite of the fact that they had experience in the kind of work involved (R. 121-122).

4. WOOD'S COMPLAINTS TO THE APPEALS COMMITTEE UNDER THE CONTRACT.

Wood made use of the Appeals Committee under the hiring provisions of the contract on two occasions during the events in this case. In February, 1960, Wood complained to the Committee that he had been improperly placed on the group four list (R. 23; 141). The complaint was dismissed by the Committee following hearing (*ibid.*). Again in March, 1960, Wood protested to the Committee that he had been discriminated against in not having been referred to the Walsh job (R. 23; 87-88). The Committee examined the books of the Chico hiring hall and interviewed Hamilton (R. 23; 142, 144-146). It was the unanimous decision of the Appeals Committee, however, that Wood's treatment in the hiring hall did not violate the hiring procedures of the contract (R. 23; 142, 148).

II.

THE BOARD'S CONCLUSIONS AND ORDER

The Board concluded that Wood "was refused referral by Respondent because of his membership in a 'railroad' rather than a 'wireman's' local, and not for the reasons advanced by Respondent" (R. 37). The refusal to refer Wood was therefore found to violate Sections 8(b)(1)(A) and

8(b)(2) of the Act. In addition, the Board declined to "give weight" to the determination of the Appeals Committee that Wood's treatment in the hiring hall had not been improper, because it was not clear that Wood's claim to be considered as a "special skills" man had been "fully considered." (R. 38).

The Board's order requires Local 340 to cease and desist from causing discrimination against Wood, "or any other employee or applicant for employment" and from "in any like or related manner" restraining employees in the exercise of their statutory rights. Affirmatively, the order requires Local 340 to pay Wood for any loss of wages caused by the refusal to refer him (R. 38-39).

ARGUMENT

SUBSTANTIAL EVIDENCE CONSIDERED UPON THE RECORD AS A WHOLE DOES NOT SUPPORT THE BOARD'S CONCLUSION THAT LOCAL 340 DISCRIMINATED AGAINST APPLICANT WOOD BECAUSE HE WAS A MEMBER OF LOCAL 800 RATHER THAN LOCAL 340.

A. The Issue Before the Court.

The Board's brief correctly states (p. 10) that a finding of a violation of the Act in this case can be supported only if there is a showing, first, that Local 340 prevented Wood from obtaining employment with Walsh Construction Company, and second, that the reason motivating Local 340 was Wood's non-membership in that Union. These separate elements of proof must independently be established to sustain the Board's conclusion. It is not enough for the Board to show alone that Local 340 deprived Wood of employment, for it has long been settled that the Act does not proscribe the denial of a job "for any reason other than union activity." *The Associated Press v. N.L.R.B.*, 301 U.S. 103, 132. See also *N.L.R.B. v. Kaiser Aluminum & Chemical*

Corporation, 217 F.2d 366, 368 (C.A. 9). Since a denial of employment may be premised on an infinite variety of considerations bearing no relation to union membership or activity, moreover, the circumstance of such a denial, standing alone, offers no support whatever for a finding that the denial was illegally motivated. As the Supreme Court recently has cautioned the Board, "we will not assume that unions and employers will violate the federal law, favoring discrimination in favor of union members against the clear command of this Act of Congress." *N.L.R.B. v. News Syndicate Co.,* 365 U.S. 695, 699. See also, *Teamsters Local 357 v. N.L.R.B.,* 365 U.S. 667, 676; *N.L.R.B. v. Sebastopol Apple Growers,* 269 F.2d 705, 711 (C.A. 9).

In the present case, it is not questioned that Local 340 declined to refer Wood to the job with Walsh Construction Company. Indeed, Business Manager Campbell testified that he had directed Hamilton, who was in charge of the hiring hall, not to dispatch Wood to that job, (*supra,* p. 7). Thus, the single question for decision by the Board was whether Local 340's reason for not referring Wood to the Walsh job was his membership in Local 800 rather than Local 340. Campbell and Hamilton testified that Local 340's treatment of Shulz's request for Wood was grounded upon their conviction that Shulz was attempting to circumvent the hiring hall procedure by obtaining named individuals to fill jobs rather than applicants who were next in line for selection under the non-discriminatory standards of the hiring hall. Shulz had already sought Union clearance for two members of his family, and Campbell understandably decided that such unfair favoritism should be stopped (*supra,* pp. 7-8). The Board, however, did not accept this explanation (R. 36-37). We do not now contend that the Board was required to adopt the reasons presented by Local 340's officials, although we submit that this explanation is far

more reasonable on the basis of the evidence than the explanation imputed by the Board, and must be considered in evaluating whether the record as a whole supports the Board's ultimate conclusion. We do contend, contrary to the reasoning implicit in the Board's decision, that a rejection of Local 340's reason for its conduct does not establish the correctness of the altogether different reason attributed by the Board to Local 340.[2] Such reasoning destroys the fundamental rule that the Board's General Counsel, in prosecuting the case, has the burden of proving unlawful motivation. See, e.g., *N.L.R.B. v. Kaiser Aluminum & Chemical Corp.,* 217 F.2d 366, 368 (C.A. 9); *Pittsburgh-Des Moines Steel Co. v. N.L.R.B.,* 284 F.2d 74, 83-84 (C.A. 9). Manifestly, to disprove a defense is not to prove the affirmative elements of a violation.

From the foregoing, it is apparent that the question before the Court is whether the conclusion of the Board that Wood was not referred because of his membership in Local 800 and his non-membership in Local 340 can be sustained by the evidence. Neither rejection of Local 340's proffered reason in this respect, nor the fact that Wood was not dispatched to the Walsh job constitutes supporting evidence for the Board. The unlawful reason attributed by the Board to Local 340 must stand or fall upon an appraisal of circumstances which bear a reasonable relation to the question of motivation. We turn, then, to an examination of the circumstances advanced by the Board in support of its position.

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2. The faulty analysis here criticized is particularly apparent in the Trial Examiner's Report, which elaborates upon the Examiner's reasons for rejecting Local 340's explanation, and thereupon concludes, with no more support than the Examiner's concept of what is "obvious," that the true explanation was Wood's non-membership in Local 340 (R. 26). In reaching its conclusion, the Board relied principally upon "the grounds cited by the Trial Examiner" (R. 35).

B. The Evidentiary Basis for the Board's Conclusion.

Two of the incidents upon which the Board rests its finding as to Local 340's motivation, especially emphasized in the Board's brief (pp. 14-15), occurred more than six months before the alleged violation, and are in no way related to the events comprising the alleged violation. First, the Board points out that in December, 1958, Business Manager Campbell, upon learning that Wood was a member of Local 800, replied, "That is bad" (R. 35). The entire testimony is as follows (R. 99-100):

> (Testimony of Jack L. Wood)
> ". . . I called the hall in Sacramento and asked to talk to Joe Campbell, and at that time he asked me over the phone what local I was out of, and I told him 800. He said that was bad. He said that is not so good—I beg your pardon—and I said, "What's so bad about it?"
>
> He said that they don't have wiremen, I believe that this is what he said, "Don't have wiremen in 800."
>
> * * * * * * *
>
> It was just, he told me it was just bad because I was a member of 800; I shouldn't work in a construction local."

There is no testimony in the record which suggests that Campbell's statements carried the sinister overtone of threatened discrimination which the Board attributes to them. On the contrary, the implication of the conversation is made plain by the explanation in the record that the majority of Local 340's contracts were with employers who used "wiremen's classifications," and that the different electrical skills called for in railroad work would probably not qualify Wood for work out of Local 340's hiring hall. See R. 103, 128, 137. The situation would be no different if a member of a wireman's local applied for referral out of a railroad local; it could not be expected that wireman's

experience would qualify the member for many jobs available in railroad work. Any other interpretation of Campbell's remarks is precluded by the fact that shortly after Wood registered with Local 340, following his conversation with Campbell, he was dispatched to a job where he remained for about a year (*supra,* p. 4). Under these circumstances, the incident cannot possibly reflect upon a union intent to discriminate against Wood fourteen months thereafter.

The second of these early incidents relied on by the Board is the refusal of Local 340 to accept Wood's traveling card from Local 800 and take him into Local 340's membership (R. 36). It is difficult to understand the significance the Board draws from this occurrence; no explanation beyond recitation of the event is contained in the Board's decision. It is not suggested that Local 340 acted improperly under its bylaws or constitution, or that Wood was in fact eligible for membership in Local 340. Indeed, the record is silent on the matter. The Act, moreover, makes explicitly clear that its provisions respecting union relations with employees are not meant to "impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." Section 8(b)(1)(A). Finally, it cannot seriously be suggested that the event had any relation to Wood's use of Local 340's hiring hall, for Wood at the very time was working on a job to which he was dispatched by Local 340, and it is similarly established that the hiring hall referred non-members of Local 340 without discrimination. See R. 128.

A further incident relied on by the Board relates to an argument between Wood and Jack Galvin, a business representative of Local 340 (R. 35). The incident occurred while

Wood was working on a job to which he was referred by Local 340, and apparently involved a charge someone had made that Wood was incompetent (R. 73-75). During the argument Galvin asked Wood, "Why don't you go back to where you came from?" The remark, Wood conceded, was made at a time when "Mr. Galvin and I both became perhaps pretty angry," and as far as the record shows, reflects nothing beyond a commonplace retort to an angry assertion. Speculation alone could connect such a remark with the treatment of Wood in the hiring hall many months later, for there is no showing that Galvin knew that Wood was a member of Local 800, that the remark implied a reference to that fact, that Galvin informed Campbell or Hamilton of the incident, or that Galvin had anything to do with the events in the hiring hall in the spring of 1960.

The single occurrence relied on by the Board which relates in time to the alleged violation in this case is Local 340's refusal to accept and grade Wood's examination which he took in January, 1960 (R. 36). Again, however, the Board does not, and on this record cannot show that Local 340 did not act in accordance with its internal rules and procedures in finding that Wood was ineligible to take the examination. Absent such a showing, it must be presumed that Wood was in fact ineligible, and that it would have been improper for Local 340 to accept the examination. Cf. *N.L.R.B. v. News Syndicate Co.*, 365 U.S. 695, 699. The Board does not explain how a valid determination that Wood was ineligible can be the basis for an inference that Local 340 intended to discriminate against Wood.[3]

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3. In a related incident, mentioned by the Trial Examiner (R. 18) but not by the Board, Hamilton reclassified Wood on February 5, 1960, to the group four list from the group three book. As shown *supra*, p. 8, the correctness of this reclassification was the subject matter of a complaint by Wood to the Appeals Committee,

The Board's decision mentions only one other circumstance to support a finding of unlawful motivation, namely, that Walsh Construction Company "is the type of a company that [Local 340] seldom [has] agreements with," and that Local 340 does not "have many members who had the special lead burning and mine locomotive skills requested by Walsh" (R. 36). The relation to the Board's conclusion of this observation, which the record most certainly supports as a factual matter, is not explained. It is unquestioned that Walsh Construction Company traditionally obtained its employees from Local 340's hiring hall (R. 57), even though its requirements differed from those of most employers with whom Local 340 dealt. If the Board means that an applicant whose skills are limited to those required by Walsh is not as likely to be dispatched from Local 340's hiring hall as an applicant with wireman's skills, this may readily be conceded, but it doesn't advance the Board's position. It has been agreed by all parties throughout this case that Local 340's hiring hall procedures, which qualify men for referral according to experience and training within classifications covered by the collective bargaining contract, are fully lawful. See R. 8, 46-50.

The foregoing discussion covers all the considerations presented by the Board which relate to its finding of an unlawful motivation. There is further discussion both in the Board's decision (R. 34-35) and the Board's brief (pp. 13-14) of the circumstances which show that Local 340 refused to dispatch Wood to the Walsh job. This fact, how-

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and the latter body determined that Wood was correctly classified in the group four list. The Board does not challenge the correctness of the reclassification (br. 8-9), just as it does not challenge the correctness of Local 340's ruling that Wood was not eligible to take the examination. It would appear that both incidents fall into the same class insofar as the present case is concerned, for neither can support an inference of an intent to act unfairly toward Wood if the validity of the union action is not contested.

ever, is conceded, and as shown *supra*, pp. 9-10, has no bearing on the single question before this Court, i.e., the sufficiency of the evidence as to unlawful motivation.

The evidence relied on by the Board which deals with motivation, moreover, must be evaluated in the light of countervailing evidence. *Universal Camera v. N.L.R.B.*, 340 U.S. 474, 488. Thus, the membership status of Wood as a consideration in Local 340's referral practices is shown to be of no significance by the fact that Wood had been cleared by the hiring hall on earlier occasions, and that other non-members of Local 340 have also been dispatched from the hiring hall (*supra*, pp. 4, 7). In addition, the inherent reasonableness of Campbell's explanation for declining to refer Wood to the Walsh job detracts from the Board's conclusion as to motivation.[4] It may be observed in this respect that the correctness of Campbell's conclusion that Shulz was playing favorites in requesting Wood, and was attempting to bypass the normal non-discriminatory referral procedure, is not in issue. It is enough to negate the Board's finding as to unlawful motivation that the information which Campbell had could reasonably support his opinion, and that he acted on that opinion. The record more than satisfies this requirement. See R. 118-127, 135-136.

Considered in the light of the entire record, the isolated and unrelated strands of evidence on which the Board relies for its conclusion as to Local 340's motivation have no more support than a circle of men sitting on each other's

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4. The Board's brief challenges Campbell's explanation by asserting that Local 340 "never indicated to Walsh in any fashion that Walsh was abusing the special skills provision of the contract." (p. 16). The brief errs. At a meeting with Shulz, Walsh's electrical superintendent, Campbell complained that "Shulz was not after that particular skill, that he was after the man" (R. 120, see also 121-122).

laps. As stated by this Court in *Morrison-Knudsen Co. v. N.L.R.B.*, 276 F.2d 63, 69:

> "The Board might suspect or surmise that the Union may have used its dispatch system to discriminate against non-union men, or to compel or encourage applications for membership. But such speculations are no substitute for proof of improper use of the system —much less for proof of an understanding that dispatching should be conditioned on union membership."

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Board's petition should be denied, and that its order should be set aside in its entirety.[5]

January, 1962.

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5. Before the Board, Local 340 contended that the Board, as a matter of administrative policy, should have given recognition to the decision of the Appeals Committee that there had been no improper discrimination against Wood. The Board has occasionally deferred to such internal procedures for the determination of disputes similar to that in the present case. We acknowledge, however, that the Board is not compelled by the Act to respect such awards, and for that reason do not renew the contention before the Court.